IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2778 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAGDISHPRASAD B. SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR JAL SOLI UNWALA for Petitioner No. 1-6

MR KP RAVAL, ASST. GOVERNMENT PLEADER for Respondent No. 1-3

MR HJ NANAVATI for Respondent No. 4

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 04/04/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri K.P. Raval for respondents Nos. 1, 2, 3 and 5, by learned advocate Shri H.J. Nanavaty for respondent No.

4 and by learned advocate Shri Pardiwala for respondents Nos. 6 to 69. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are teachers who claim to be in management of Shri Balahanuman Sanskrit Mahavidyalaya (hereinafter referred to as 'the school'), which was formerly managed by respondent No. 4 Trust. The petitioners have challenged the validity of an order dated 13.2.2002 passed by the Addl. Secretary, Education Department, State of Gujarat. By virtue of the impugned order, the recognition given to the school in 1989 has been cancelled with effect from June 2001. It has been recorded in the said order that respondent No. 4 Trust was not interested in managing the school and even sufficient number of students were also not studying in the school and, therefore, the recognition given to the said school had been cancelled with effect from June 2001. It has been also directed by the impugned order to the Commissioner, Mid-day Meals and Schools (hereinafter referred to as 'the Commissioner') to examine whether the teachers of the school are required to be relieved or they are entitled to the protection which is given to surplus teachers. Thus, the Commissioner, in pursuance of the impugned order, has to examine cases of the concerned teachers and thereafter he has to take appropriate decision.

3. By virtue of the impugned order, it has been also provided that if the students of the school desire to prosecute their studies but are unable to do so on account of closure of the school, necessary arrangement for giving admission to the said students in other schools should be made by the Commissioner.

4. Learned advocate Shri Jal Unwalla appearing for the petitioners has submitted that the impugned order is neither legal nor just and is also violative of the principles of natural justice. It has been submitted by him that by virtue of the impugned order dated 13.2.2002 recognition of the school has been cancelled with effect from June 2001. It has been submitted by him that it was not open to the Addl. Secretary, Education Dept. to de-recognise the school with retrospective effect because while doing so, he did not take due care about the interest of the students who were prosecuting their studies in the school. It has been also submitted by him that the petitioners who are teachers working in the school were also not heard before passing the impugned order. According to him, the impugned order adversely

affects the petitioners and therefore the petitioners ought to have been heard by the Addl. Secretary, Education Dept. before passing the impugned order.

5. It has been thereafter submitted by the learned advocate that the statement made in the impugned order that sufficient number of students were not studying in the school is also not correct. According to him, more than 100 students are studying in the said school and the number of students studying in the school is much more than the requisite strength of students which is required for the purpose of giving recognition to the school. He has relied upon the extract of certain registers maintained by the school to show that more than 100 students are studying in the school.

6. It has been also submitted by the learned advocate that the students who are studying in the said school are prosecuting their studies under the present petitioners who were formerly teachers of the school managed by respondent No 4 Trust. It has been submitted by him that respondent No. 4 had closed down the school without following necessary procedure and, therefore, by an order dated 17th July 2001, the Commissioner, i.e. respondent No. 2, had directed that the school should be restarted and necessary formalities for giving admission to the students should be commenced by the authorized persons of the school. As per the said order, on 25.7.2001, in presence of several government officers, the petitioners, who are teachers of the said school, were given possession of the documents, registers etc. belonging to respondent No.4 Trust, which were necessary for the purpose of managing the school and with effect from that date, they had taken over the management of the school and since then the petitioners are managing the school.

7. It has been submitted by the learned advocate that for sometime the students were taught in an open compound beneath some trees as respondent No. 4 Trust had not permitted the petitioners, and more particularly petitioner No. 1, who was principal of the said school, to use the school premises for the purpose of imparting education to the students of the school. Thereafter petitioner No. 1 and other petitioners had managed to take a few rooms on rent and started using those rooms as classrooms for the purpose of teaching the students. It has been submitted that thus the students who are prosecuting their studies in the said school were continued to be taught their subjects by the petitioners in pursuance of an order dated 17th July 2001. Moreover,

according to the learned advocate, some new students were also admitted when the new academic term had started. Thus, the students are being regularly taught by the petitioners in the school which is being managed by the petitioners.

8. It has been further submitted that the students, who are prosecuting their studies in a school which was initially managed by respondent No. 4 Trust, had completed their studies and the said students had filled up their examination forms for appearing at the examinations, which are conducted by respondent No. 5 Board. It has been submitted that necessary forms were filled up and have been submitted to the Board. The Board has also issued necessary permission to the concerned students to appear at the examinations as the students have completed their studies and their academic terms have also been granted.

9. It has been submitted by the learned advocate that respondent No. 4 Trust and its trustees are making efforts to see that the students who have been imparted education by the petitioners are not permitted to appear at the examinations. It has been submitted that efforts are being made by the trustees to see that the Board objects to the students appearing at the examinations for one reason or another. It has been submitted by the learned advocate that the students have been imparted necessary education by the petitioners and the students would be wasting one important year if any objection is raised by respondent No. 5 Board with regard to their appearance at the examinations.

10. Thus, the learned advocate for the petitioners has submitted that the impugned order either requires to be quashed and set aside or requires to be reviewed by the Addl. Secretary, Education Department, so that education of the students, who have to appear at the ensuing examinations, is not adversely affected and the school, which was being run by respondent No. 4 Trust, is not closed down in violation of the legal provisions.

11. During the pendency of the petition, 64 students of the school had submitted an application for being joined as respondents in this special civil application as they were vitally interested in the outcome of this petition. Their application for being joined as respondents has been granted.

12. Learned advocate Shri Pardiwala, appearing for said students, has submitted that the applicants-students

and other students have been given comprehensive training and have been imparted education by the petitioners, who are the teachers. It has been submitted by him that only on account of some dispute among the teachers and the management, respondent No. 4 Trust wants the school to be closed down. As a result of the said closure, education of the students would be adversely affected. It has been submitted by him that the students have filled up their examination forms and they have also been permitted to appear at the ensuing examinations by the respondent Board. It has been submitted by him that the students are not at all concerned with the dispute which the management and the teachers are having, but they are only interested in their studies. He has taken a stand to the effect that the closure of the school under the impugned order is bad for the reason that necessary permission under the provisions of sec. 44 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as 'the Act') was never taken and therefore the school ought not to have been closed down.

13. Learned advocate Shri H.J. Nanavaty appearing for respondent No. 4 Trust has submitted that the impugned order, so far as it pertains to closure of the school, is absolutely just, legal and proper. It has been submitted by him that it was not necessary to hear the petitioners before passing the impugned order. The number of students undergoing their studies in the school was not adequate and therefore the Addl. Secretary, Education Dept., has rightly ordered closure of the school under the impugned order dated 13.2.2002.

14. It has been also submitted by him that respondent No. 4 was not concerned whether the petitioners were given protection as surplus teachers. It has been submitted by him that the respondent Trust had no animosity against the petitioners and the respondent Trust would also not like to act in a manner which would jeopardize the interest of the students. It has been submitted by him that the object of the respondent Trust is to advance education of Sanskrit. If the students of the school prosecute their studies elsewhere and appear at the examinations in accordance with law, the respondent Trust would never object to the same provided they do not wrongfully use the name of respondent No. 4 Trust.

15. Learned advocate Shri Nanavaty has disputed the facts placed before this court by the petitioners. According to him, the number of students studying in the school as stated by the petitioners is not correct. He

has drawn my attention to several contradictory statements made in the petition or in replies filed on behalf of the petitioners regarding the strength of students. He has also submitted that some of the students are not bona fide students and the petitioners have made an effort to show more number of students so as to persuade the respondent government authorities to permit the petitioners to manage the school.

16. The learned advocate has vehemently submitted that the petitioners have no right to manage or run the school in the name of respondent No. 4 Trust. It has been submitted that the act of taking management of the school by the petitioners in pursuance of order dated 17.7.2001, was not proper because before the petitioners had approached the school premises for taking over management or possession of the premises, the respondent Trust had filed Special Civil Application No. 5943 of 2001 and had obtained an interim relief whereby implementation and execution of the order dated 17.7.2001 had been stayed. As implementation and execution of the order dated 17.7.2001 had been stayed by this court, according to the learned advocate, it was not open to the petitioners to act in pursuance of the said order and take possession of the premises of the school or start managing the school as directed in the order dated 17.7.2001.

17. Learned AGP Shri K.P. Raval appearing for the respondent government authorities has submitted that the impugned order is just and legal. He has tried to support the impugned order by submitting that it was open to the Addl. Secretary, Education Department, to direct closure of the school. It has been submitted by him that the question with regard to closure of the school was duly considered by the concerned authority and only after due deliberation and careful consideration, the said decision had been taken. It has been also submitted by him that so far as the matter which pertains to protection of the teachers is concerned, the petition is premature because til today the Commissioner has not taken any final decision as to whether the petitioners are to be declared surplus and absorbed elsewhere.

18. He has also submitted that by virtue of the impugned order bona fide students would not be adversely affected for the reason that the Commissioner has to make arrangement for admission of the students in any other school where Sanskrit is taught.

19. It is also pertinent to note here that in the course of arguments, learned advocate appearing for the

petitioners has submitted that the petitioners had created a trust after the order dated 17.7.2001 was passed. The trust has been registered in the name of "Shri Balahanuman Sanskrit Vikas Mandal" and the petitioners as trustees of the said trust are ready and willing to continue to manage the school. If necessary, the petitioners are also prepared to start a new school and for that purpose they have also submitted an application to respondent No. 2 for getting necessary recognition. Upon making an inquiry, learned AGP Shri Raval has submitted that the said application is under consideration and necessary information is being gathered by the concerned officers so as to enable respondent No. 2 to take final decision as to whether necessary recognition should be given to the proposed new school of the petitioners.

20. Upon hearing the learned advocates and noting the facts of the case, it is clear that several disputed questions of fact are involved in the petition. It is not certain as to whether sufficient number of students were studying in the school which was managed by respondent No. 4 Trust. Upon perusal of the impugned order, it appears that the strength of students studying in the school was less than the requisite number whereas it has been submitted by the petitioners as well as the respondent students that sufficient number of students were studying in the school. There is material to show that more than one hundred students were studying and most of them have been permitted to appear at the examinations to be conducted by respondent No. 5 Board. It is not in dispute that respondent No 4 Trust does not want to continue the school either because the number of students has gone below the requisite number or for other reasons. It is true that the respondent Trust had asked for permission to close the school and the permission has been granted but it is not certain whether the permission for closure has been given in violation of the provisions of sec. 44 of the Act. Upon perusal of the impugned order, it is not clear whether the provisions of sec. 44 of the Act had been looked into by the Addl. Secretary, Education Department, while giving permission to close the school. It is also not certain whether the petitioners have taken management of the school in accordance with law because on 25.7.2001, the day on which this court had stayed implementation and execution of order dated 17.7.2001, the petitioners had taken actual possession of the registers and other record of the school and had started managing the school. The say of learned advocate Shri Nanavaty appearing for respondent No. 4 Trust is that before the management was

assumed by the petitioners, this court had granted interim relief whereby implementation of order dated 17.7.2001 had been stayed. On the other hand, it has been submitted by the petitioners that before the said order was communicated to the concerned authority, who was in-charge of the school at the relevant time, the petitioners had assumed management of the school. Thus, it is also a disputed question of fact whether the management of the school was taken over by the petitioners in accordance with law and whether the petitioners were entitled to take the management as authorized persons.

21. Thus, several disputed questions of fact are involved and upon perusal of the impugned order, it appears that the above factors were not duly considered while passing the impugned order.

22. In the circumstances, in my opinion, the entire issue with regard to closure of the school requires to be reconsidered by the Addl. Secretary, Education Department or by any other competent authority. Looking to the facts of the case, it is directed that the entire issue be reexamined by the Addl. Secretary, Education Department, after hearing respondent No. 4 Trust as well as the petitioners as they are also having some information which can help the authority in coming to a final conclusion. Learned advocate Shri Pardiwala has also submitted that with regard to the number of students studying in the school, the students may also be in a position to give correct picture to the concerned authority and therefore he has submitted that a representative of the students be also heard by the Addl. Secretary, Education Department. In the circumstances, a representative of the students, whose details are given below, shall also be given notice and heard by the authority :

Shri Balmukund Pramodrai Dave
Gram Post: Ramasan
Tal. Vijapur, Dist. Mehsana

After hearing the concerned parties, the Addl. Secretary, Education Department, shall decide whether the decision taken under order dated 13.2.2002 with regard to giving permission for closing the school was proper. Till a fresh decision is taken, the order, which has already been passed, shall remain in force. While taking the decision, the Addl. Secretary, Education Department, shall also consider whether the provisions of sec. 44 of the Act are applicable in the instant case. After

hearing all the three representatives as stated hereinabove, the said authority shall pass a reasoned order.

23. It has been submitted by learned advocate Shri Unwalla for the petitioners that the petitioners are also interested in managing a school and, therefore, an application dated 22.3.2002 and other applications have been given by the petitioners to respondent No. 2 and the said applications are pending. As stated by the learned AGP, necessary inquiry is being made so as to decide whether Shri Balahanuman Sanskrit Vikas Mandal should be permitted to run a Sanskrit Pathshala. It is hoped that the Commissioner shall act as soon as possible and if any other information is required by him so as to enable him to decide the application made by the petitioners, he shall call for further information from petitioner No. 1.

24. The Commissioner has also to decide as per the direction given by the Addl. Secretary, Education Department, whether upon closure of the school, its teachers are to be relieved or they should be declared as surplus teachers. The said decision shall also be taken by the Commissioner at an early date. If the Commissioner has to wait for the final order of the Addl. Secretary, Education Department, then it would be open to him to make preliminary inquiry so that he can take final decision on the said subject immediately after final decision is taken by the Addl. Secretary, Education Department.

25. So far as education of the students is concerned, the present academic term has come to an end and the students would be appearing at the examinations in the month of April. Thus, there is no question at this stage with regard to making another arrangement for the students for their further studies for the next academic term.

26. It is hoped that the Secretary, Education Department, shall take final decision as directed hereinabove within a period of five weeks from the date of receipt of this order so that if it is finally held that the school is to be closed down, the students can make necessary arrangements for their admission to another school for the next academic term.

27. In view of the above directions, the petition is partly allowed. The order dated 13.2.2002, so far it pertains to closure of the school is concerned, shall

operate only till final decision as directed hereinabove is taken by the Addl. Secretary, Education Department.

Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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